IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ADMS NO. 2 OF 2005

CURZON MARITIME LTD. .. Plaintiff.

vs.

PEC LTD. .. Defendants.

Mr. P.S. Pratap with Ms. Monica Kohli

for the plaintiff.

CORAM : S.U.KAMDAR, J.

DATE : 5th August,2005.

P.C.

. The present suit is filed for the recovery of a sum of US$ 1,93,80 together with interest at the rate of 9% on principal amount of US$ 1,52,689.23. In the present suit it is an admitted position that in respect of the suit claim an arbitration proceedings were initiated by the plaintiffs themselves and the said arbitration proceedings were in progress even before filing of the suit. The said arbitration proceedings culminated by passing an award dated 30.9.2002. Inspite of an award in his favour, the plaintiff has filed the present suit purportedly to save the claim becoming barred by law of limitation.

2. Today, the learned counsel for the plaintiff states that the Arbitration Petition No. 239 of 2003 has been disposed of by this Court by an order and judgment dated 14.3.2005 and the award has culminated in a decree of this Court. However, the learned counsel insists on the prosecution of the present suit inter alia on the ground that the appeal preferred therefrom being Appeal (Lodging) No. 554 of 2005 is still pending and till the appeal is finally determined one way or the other, he wants to keep the present suit alive.

3. In my opinion, the present suit is a frivolous suit and is a total abuse of the process of the Court. Once a party exercises the right under the arbitration agreement and invokes the agreement clause and commences the arbitration proceedings, he is not entitled to simultaneously also litigate by filing a suit. Secondly in the present case at this stage, the said award has already culminated in a decree. There cannot be second decree in respect of the same claim. The contention of the learned counsel for the plaintiffs that the suit should be kept pending because he wants to save the period of limitation is a misnomer in view of section 43 (3) of the Arbitration and Conciliation Act, 1996. In my opinion the question of suit becoming barred by limitation does not

arise. Inspite of the aforesaid the learned counsel for the plaintiff has taken out a notice of motion being Notice of Motion No. 2139 of 2005 for stay of the suit which I have already dismissed by my separate order passed today.

4. In view of my finding that the present suit is frivolous and an abuse of the process of the Court, I dismiss the present suit. I propose to impose heavy cost in the following circumstances. Firstly this matter was heard on earlier four occasions. Inspite of repeatedly pointing out that the proceeding is not an appropriate proceeding particularly in view of the provisions of sub-section 4 of section 43 of the Arbitration and Conciliation Act, 1996, the plaintiff who is a foreign party and situated at Greece through its learned counsel has insisted on prosecution of the present suit. Not only that, on the earlier occasions after taking two adjournments for considering the legal position, the motion is taken out for stay of the suit till the hearing and final disposal of pending appeal arising in arbitration proceedings. The said motion I have heard and dismissed today. It is well known fact and it has been established by various authorities of English Court that costs awarded in the foreign countries is commensurate with the actual cost incurred by the parties even if a proceeding is not a frivolous one.

In the present case, inspite of repeatedly pointing out that the present proceeding is not proper and legal, still the said proceeding is prosecuted. Having come to the conclusion that the proceedings is frivolous and an abuse of the process of law, I also saddle the plaintiff with cost quantified at Rs. 25,000/- The said cost to be paid by the plaintiff to the Maharashtra State Legal Services Authority.